

1 Bob H. Joyce (SBN 84607)
Andrew K. Sheffield (SBN220735)
2 law offices of LeBeau • Thelen, LLP
5001 East Commercenter Drive, Suite 300
3 Post Office Box 12092
Bakersfield, California 93389-2092
4 (661) 325-8962; Fax (661) 325-1127

5 Attorneys for DIAMOND FARMING COMPANY,
CRYSTAL ORGANIC FARMS, GRIMMWAY
6 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

7 Robert G. Kuhs, (SBN 160291)
KUHS & PARKER
8 P. O. Box 2205
1200 Truxtun Avenue, Suite 200
9 Bakersfield, California 93303
(661) 322-4004; Fax (661) 322-2906

10 Attorneys for TEJON RANCHCORP and
11 GRANITE CONSTRUCTION COMPANY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 Coordination Proceeding Special Title
15 (Rule 1550 (b))

Judicial Council Coordination No. 4408

16 ANTELOPE VALLEY GROUNDWATER
CASES

Case No.: 1-05-CV-049053

17 Included actions:

18 Los Angeles County Waterworks District No.
40 vs. Diamond Farming Company
19 Los Angeles Superior Court
Case No. BC 325201

**OPPOSITION AND OBJECTION TO
NOTICE OF MOTION AND MOTION
FOR AN ORDER CLARIFYING AND
MODIFYING THE ORDER RE:
MOTION FOR ORDER AUTHORIZING
COURT-APPOINTED EXPERT WORK,
ENTERED DECEMBER 11, 2012**

21 Los Angeles County Waterworks District No.
40 vs. Diamond Farming Company
Kern County Superior Court
22 Case No. S-1500-CV 254348 NFT

**Date: July 29, 2013
Time: 10:30 a.m.
Dept: 48**

23 Diamond Farming Company vs. City of
Lancaster
24 Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
25 w/Case Nos. 344668 & 353840]

26 _____
27 **AND RELATED CROSS-ACTIONS.**

COMES NOW, DIAMOND FARMING COMPANY, CRYSTAL ORGANIC FARMS, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC and TEJON RANCH CORP and GRANITE CONSTRUCTION COMPANY and hereby files their opposition and objections to the motion of LITTLE ROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, NORTH EDWARDS WATER DISTRICT and DESERT LAKE COMMUNITY SERVICES DISTRICT ("Moving Parties") for order clarifying and modifying the Order re: Motion for Order Authorizing Court-Appointed Expert Work, entered December 11, 2012.

The Moving Parties motion to clarify and modify prior court orders is a thinly disguised and untimely motion for reconsideration and should be denied.

I.

INTRODUCTION

More than four years ago the Woods Class moved to have the court appoint an expert to defend against the Public Water Suppliers claims of prescription. According to Woods:

The primary reasons the Court-appointed expert is necessary is to gather evidence of the Class' water use for both settlement and litigation purposes, i.e., establishing the self-help defense, under which an overlying landowner may defeat a claim of prescription by pumping water on his property during the prescriptive period. (See Woods' Motion For Order Authorizing Court Appointed Expert Witness Work, dated July 12, 2011.)

On April 24, 2009, the court granted Woods Class' motion for an order appointing Timothy Thompson as a court-appointed expert, but stayed the order pending allocation of the expert's fees. On May 6, 2009, however, the Woods Class and Public Water Suppliers stipulated, and the court ordered that the stay be lifted and that Mr. Thomson commence his work. Then, on May 25, 2010 the court entered an order apportioning Mr. Thompson's fees among 10 of the 12 Public Water Suppliers. The Court specifically exempted the Cities of Lancaster and Palmdale from paying expert fees because "neither of those parties are making claims against [the Woods Class]." (May 25, 2010 Order, p. 3, lines 25-26.) Just as the Cities of Palmdale and Lancaster were exempted, so were all other landowners who likewise had not asserting prescription claims against the Woods Class.

Most recently, on December 11, 2012 the court entered an Order Re: Motion For an Order Authorizing Court-Appointed Expert Work ordering that the 10 Public Water Suppliers asserting

1 prescription claims against the Woods Class to pay Mr. Thompson's fees on a per capita basis within 10
2 days of receipt. Rather than pay \$711.36 as ordered by the court, the Moving Parties feign poverty and
3 ask this court once again to reallocate the costs of prosecuting their prescription claims against the
4 Woods Class.

5 This subject motion is in fact a motion for reconsideration of both the May 25, 2010 and
6 December 11, 2012 orders, and violates the limitations and mandates of California Code of Civil
7 Procedure section 1008. California Code of Civil Procedure section 1008(e) precludes reconsideration
8 of this court's prior orders and consideration of this motion in that the same does not satisfy the timing
9 and/or procedural requirements of Code of Civil Procedure section 1008(a).

10 II.

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 Two types of motions are authorized under Code of Civil Procedure section 1008 after a judge
13 or court has made an order. The within motion implicates Code of Civil Procedure section 1008(a).
14 That section limits the time within which a party can move for reconsideration to ten (10) days after
15 service on the party of written notice of entry of the order. Here, the operative orders are well over two
16 years old. The order on the Woods Class motion for allocation of expert witness fees was entered on
17 March 25, 2010. (See, Order After Case Management Conference on May 6, 2010, attached hereto as
18 Exhibit "A.") The Moving Parties' motion is therefore untimely. Additionally, the motion does not
19 satisfy the procedural mandates of Code of Civil Procedure section 1008(a). Just as the court excluded
20 and modified the allocation order to eliminate the Cities of Lancaster and Palmdale, on the express basis
21 that they had no pending claims as against the Woods Class, the court likewise did not order any other
22 landowner, who likewise had no pending claims against the Wood Class, to participate in the payment
23 of the court appointed expert. Those realities have not changed nor been altered in any sense since the
24 date that the order was entered, and consequently, there is no current justification for this court to modify
25 or otherwise reconsider the prior orders.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

CONCLUSION

As noted above, given that the subject motion does not satisfy the procedural nor timing dictates of California Code of Civil Procedure section 1008(a), consideration of that motion is hereby objected to consistent with the limitations of Code of Civil Procedure section 1008(e). Additionally, the motion should be denied on the merits in that there is no showing of any changed circumstances different than those that existed at the time that the motion for allocation of expert witness fees was first made, argued, and decided.

Dated: July 16, 2013

LeBEAU • THELEN, LLP

By: 

BOB H. JOYCE
Attorneys for DIAMOND FARMING
COMPANY, a California corporation,
CRYSTAL ORGANIC FARMS, a limited
liability company, GRIMMWAY
ENTERPRISES, INC., and LAPIS LAND
COMPANY, LLC

Dated: July 16, 2013

KUHS & PARKER

By: 

ROBERT G. KUHS
Attorneys for TEJON RANCHCORP and
GRANITE CONSTRUCTION COMPANY

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 01 2010

John A. Glavin, Executive Officer

By Raul Sanchez

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions; Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judge: Honorable Jack Komar

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

*Antelope Valley Groundwater Litigation (Consolidated Cases)
Los Angeles County Superior Court, Lead Case No. BC 325 201
Order After Case Management Conference on May 6, 2010*

EXHIBIT A

1 Angeles, Case No. BC 391 869

2
3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a
19 simultaneous disclosure and exchange of expert information, including any reports prepared by
20 such experts, is extended from July 1, 2010 to **July 15, 2010**. The time for any supplemental
21 disclosures and exchange of information is extended from July 15, 2010 to **July 29, 2010**. The
22 time for expert depositions to be conducted is amended to **between July 29, 2010 and**
23 **September 13, 2010**.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide
25 percipient testimony shall file a statement listing such witness, the subject matter of their
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a
9 "physical solution," as prayed for by the public water provider parties. The public water
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
13 to hear evidence concerning total pumping and total recharge from all sources, with a further
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS' MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O'Neill is
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS' MOTION FOR ALLOCATION OF EXPERT WITNESS**

19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for
21 Allocation of Expert Witness Fees, providing that the twelve named "Public Water Suppliers"
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of
26 those parties are making claims against the these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are

1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation
3 District, North Edwards Water District, Desert Lake Community Services District, California
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon
5 Hills Community Services District.

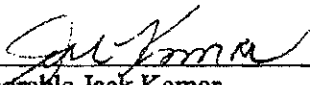
6 Further, the request of Richard Wood to authorize the court-appointed expert to
7 commence the work outlined in the proposal from Entrix, which was attached to the moving
8 papers, is denied without prejudice based on the decision that no evidence of individual
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFeree/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of
14 the issues by the parties. The Court requests that the proponent of this transfer document file by
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**
17 **Department 1, Los Angeles County Superior Court.**

18 SO ORDERED.

19
20 Dated: May 25, 2010

21 
22 Honorable Jack Komar
23 Judge of the Superior Court
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On July 16, 2013, I served the within **OPPOSITION AND OBJECTION TO NOTICE OF MOTION AND MOTION FOR AN ORDER CLARIFYING AND MODIFYING THE ORDER RE: MOTION FOR ORDER AUTHORIZING COURT-APPOINTED EXPERT WORK, ENTERED DECEMBER 11, 2012**

☒ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefilings.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary business practices from Kern County. I am readily familiar with this business' practice of collecting and processing correspondence for overnight/express/UPS mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with delivery fees paid/provided for at the facility regularly maintained by United States Postal Service (Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal Express/United Postal Service to receive documents].

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on July 16, 2013, in Bakersfield, California.


LEQUETTA HANSEN